on premises. I am, therefore, of the opinion that the development tax is payable on the property belonging to the company, even it is in voluntary liquidation.

I am further of the view that this is a proper application to court, and I order that the costs of both parties be taxed and paid out of the assets of the company.

Order accordingly.

TEO CHWEE GEOK v. MAYNARD & CO. LTD. & ANOR.

[O.C.J. (Choor Singh J.) April 23, 1968]
[Singapore — Suit No. 2021 of 1964]

Landlord and Tenant — Sub-letting — Recovery of possession against sub-tenant — Possession recovered against tenant — Whether there was prohibition against sub-letting — Control of Rent Ordinance, (Cap. 242) s. 15(1)(l).

The plaintiff was the chief tenant of a rent controlled premises. On or about February 27, 1960, the plaintiff let the ground-floor of the premises to one Peter Chong, the chairman of the board of directors of the first defendant company. Negotiations between the plaintiff and Peter Chong for the tenancy of the premises were conducted through an intermediary, who was an employee of the first defendant company. Although rent receipts were issued in the name of Peter Chong, the premises were used as a dispensary of the first defendants. Peter Chong died in September 1960. Thereafter the plaintiff issued rent receipts in the name of the first defendants. In June 1963, the first defendants ceased to carry on the business of a dispensary, and in August 1963, they sublet the ground-floor to the second defendants without the plaintiff's consent. By a notice to quit, the plaintiff determined the tenancy of the first defendants. He commenced proceeding against the first and second defendants for the recovery of possession of the ground-floor of the premises. Judgment was given for the plaintiff for the recovery of possession against the first defendants under section 15(1)(l) of the Control of Rent Ordinance. But the judgment was declared to be unenforceable against the second defendants. The plaintiff appealed against that part of the judgment. The appeal was heard before the Federal Court which ordered a retrial of the action between the plaintiff and the second defendants. (See [1967] 1 M.L.J. 245).

At the retrial, the plaintiff contended that he was entitled to recover possession of the ground-floor of the premises from the second defendants as the first defendants had sublet the premises in breach of a prohibition against sub-letting in the sub-tenancy agreement. He sought to establish the existence of such prohibition in the sub-tenancy agreement on two grounds: (1) that when the premises was first let to Peter Chong there was a restriction against sub-letting and, that the first defendants were bound by such restriction as Peter Chong held the premises as agent for them (2) that he had been promised by the intermediary, as representative of Peter Chong, that on Peter Chong ceasing to run the dispensary, the premises would be returned to him.

Held, dismissing the claim: (1) there were two separate and distinct sub-tenancies of the ground-floor granted by the plaintiff, first to Peter Chong and after his death to the first defendants. In granting the tenancy to the first defendants, the plaintiff had placed no restriction on sub-letting;

(2) the plaintiff had failed to prove that the intermediary had promised that the premises would be returned to him on Peter Chong ceasing to run the dispensary. The first defendants were therefore not prohibited by the terms of their sub-tenancy from subletting to the second defendants. The plaintiff was consequently not entitled to an order for possession against the second defendants.

CIVIL SUIT.

K. E. Hilborne for the plaintiff.

J. F. McWilliam for the 2nd defendants.

Choor Singh J.: In this suit the plaintiff claims possession of the ground-floor of the premises known as No. 202 Orchard Road, Singapore.

The following facts are not in dispute. The plaintiff is the chief tenant of the premises which were at all material times subject to the Control of Rent Ordinance. On or about the 27th February 1960 the plaintiff let the ground-floor to one Peter Chong on a monthly tenancy at a rent of $120 per month. Peter Chong was the chairman of the board of directors of the first defendant company, namely, Maynard & Co., Ltd. and he had obtained the tenancy of the ground-floor of the premises for use as a dispensary by the first defendants. The negotiations between the plaintiff and Peter Chong for the tenancy of the ground-floor were conducted through an intermediary named Lee Swee Hin who was a chemist employed by Maynard & Co., Ltd. Peter Chong died in September 1960 and thereafter at the request of an official of Maynard & Co., Ltd. the plaintiff issued rent receipts in the name of Maynard & Co., Ltd. In June, 1963, Maynard & Co., Ltd. ceased to carry on the business of a dispensary on the ground-floor and in August 1963 they sublet the ground-floor to Ng Hui Lip & Company, the second defendants, without the plaintiff's consent. By a notice to quit dated the 7th October 1964 the plaintiff determined the tenancy of the first defendants as from the 30th November 1964. On the 3rd December 1964 the plaintiff commenced these proceedings against the first and second defendants for recovery of possession of the ground-floor of the premises. This action came on for trial before Mr. Justice Ambrose and he gave judgment on the 28th March 1966 for the plaintiff for recovery of possession of the ground-floor against the first defendants under paragraph (l) of section 15(1) of the Control of Rent Ordinance and declared that the judgment for possession shall not be enforceable against the second defendants. The plaintiff appealed against that part of the judgment which declared that the judgment for possession shall not be enforceable against the second defendants. The appeal came on for hearing before the Federal Court of Malaysia which ordered a retrial of the action between the plaintiff and the second defendants.

The plaintiff now seeks to recover possession of the ground-floor of the premises from the second defendants on the ground that they are unlawful sub-tenants because it is alleged that Maynard & Co., Ltd. were by the terms of their tenancy prohibited from sub-letting the ground-floor to the second defendants.

The issue in this case, therefore, is whether or not Maynard & Co., Ltd. were by the terms of their tenancy prohibited from sub-letting the ground-floor.

Before I deal with the evidence of the two principal witnesses, it is desirable to dispose of the point that I took up with counsel for the plaintiff in the course of the trial before me. It appeared to me upon reading the pleadings, the judgment of Ambrose, J. and the judgment of Winslow J. which was the only judgment delivered in the Federal Court of Malaysia, that there were two separate and distinct sub-tenancies of the ground-floor granted by the plaintiff, first to Peter Chong and upon his death to Maynard & Co., Ltd. In paragraphs 2 and 3 of his statement of claim the plaintiff had pleaded as follows:—

"2. In or about March 1960 the plaintiff orally let the ground-floor of the said premises (there being in all three floors) to one Peter Chong (now deceased) on a monthly tenancy at a rent of $120 per month. It was a term of the said agreement that the said Peter Chong, as the sub-tenant of the said ground-floor should not part with the possession thereof and that upon the said ground-floor ceasing to be used as premises whereon to carry on a dispensary the same should be returned to the plaintiff.

3. In or about 1961 the plaintiff learned that the said Peter Chong had died, whereupon at the request of the first defendants the tenancy of the said ground-floor was granted to them upon the same terms and condition."

In his judgment Ambrose J. states, on page 1:—

"On or about the 27th February 1960, the plaintiff let the ground-floor to one Peter Chong on a monthly tenancy at a rent of $120 per month. Peter Chong was the chairman of the board of directors of the first defendant company, namely, Maynard & Co., Ltd. Peter Chong died in September, 1960. A few months later, the plaintiff granted a tenancy of the ground-floor to the first defendants at the monthly rent of $120."

And Winslow J. sitting as a judge of the Federal Court of Malaysia states in his judgment, on page 1:—

"The plaintiff is the chief tenant of the ground and first floor of the premises in question. . . . On 1st March 1960 he sub-let the ground-floor to one Peter Chong on a monthly tenancy at a rent of $120 per month through the good offices of an intermediary known as Lee Swee Hin who was a pharmacist in the employment of Maynard's of which Peter Chong was the chairman of the board of directors. A few months after the death of Peter Chong in September 1960, the plaintiff granted the tenancy of the said ground-floor to Maynard's at the same monthly rent."

And further, at page 8:—

"The important question of fact for determination by the court below was whether it was a term of Peter Chong's tenancy and later of Maynard's that they would give up possession on ceasing to run a dispensary on the ground-floor of the premises in question."

The underlining is mine. It is clear from the above, that all along, both in the previous trial before the High Court as well as in the appeal before the Federal Court of Malaysia, it was accepted by all concerned that there were two separate and distinct sub-tenancies of the ground-floor granted by the plaintiff, first to Peter Chong and then to Maynard & Co., Ltd. and when I pointed this out to counsel for the plaintiff and observed that it did not necessarily follow that the tenancy to Maynard & Co., Ltd. was on the same terms as that granted to Peter Chong, counsel for the plaintiff applied to amend his statement of claim to read: "the plaintiff orally let the ground-floor of the said premises to one Peter Chong (now deceased) as agent for the first defendants on a monthly tenancy at a rent of $120 per month". I allowed this amendment but in my opinion it is too late now for the plaintiff to shift his position. Furthermore the position as stated in the amended statement of claim is not borne out by the evidence on oath of the plaintiff. In the present trial the plaintiff testified that he let the premises to Lee Swee Hin that he considered Lee to be his tenant; that he expected to collect the rent from Lee; that he made out the rent receipts in the name of Peter Chong because Lee told him to do so; and that he believed Lee when he said that he was the proprietor of Maynard & Co., Ltd. and Peter Chong was his cashier. In the previous trial before Ambrose J. the plaintiff had testified that he had realised when he was asked to put Peter Chong's name on the receipt that Peter Chong was to be the tenant and that he expected the future rents to come out of Peter Chong's pocket.

Counsel for the plaintiff submitted that the tenancy of the ground-floor was granted to Peter Chong as agent of Maynard & Co., Ltd.; that a limited company can act only through its officers; that Peter Chong negotiated with the plaintiff on behalf of Maynard & Co., Ltd.; and that Peter Chong took the tenancy as agent for Maynard & Co., Ltd. I did not accept this submission because it is not borne out by the evidence. The plaintiff's evidence is that he let the premises to Lee Swee Hin. The rent receipt was made out in the name of Peter Chong and although it may be argued that this is not conclusive evidence on this issue, it is in my opinion evidence that goes a long way to support the contention that Peter Chong was to be the tenant. Furthermore the plaintiff admitted in the previous trial that he considered Peter Chong to be his tenant and that he expected the rent to be paid by Peter Chong. Had Peter Chong negotiated on behalf of Maynard & Co., Ltd. and obtained the tenancy in his capacity as agent of Maynard & Co., Ltd. the

rent receipts would undoubtedly have been made out in the name of Maynard & Co., Ltd. It is true that Peter Chong obtained the premises for the use of Maynard & Co., Ltd. but for some reason he kept the tenancy in his name. It was only on his death that the tenancy was transferred to Maynard & Co., Ltd. And this has been the accepted position all along, both in the previous trial before the High Court and in the appeal before the Federal Court of Malaysia. On the evidence before me I held that the plaintiff had granted the tenancy of the ground-floor to Peter Chong; that some months after the death of Peter Chong he granted the tenancy of the ground-floor to Maynard & Co., Ltd. and that in granting the tenancy to Maynard & Co., Ltd. the plaintiff had placed no restrictions on sub-letting. Maynard & Co., Ltd. were therefore not prohibited from sub-letting the ground-floor to the second defendants and the plaintiff is consequently not entitled to an order for possession against the second defendants.

In case I am wrong in my finding that there was a separate and distinct tenancy granted to Maynard & Co., Ltd. after the death of Peter Chong, I shall now deal with the question whether Lee Swee Hin, the representative of Peter Chong, had promised the plaintiff that on Peter Chong ceasing to run a dispensary on the ground-floor the premises would be returned to him. There was only one witness on either side who testified on this point and they were the plaintiff and Lee Swee Hin respectively who differed in their versions of the terms on which the ground-floor was let to Peter Chong. According to the plaintiff, Lee Swee Hin, the representative of Peter Chong, promised him that on the latter's ceasing to run a dispensary on the ground-floor the premises would be returned to him. Lee Swee Hin denied any such promise. It is therefore necessary to examine the evidence of these two witnesses in some detail in order to ascertain which of them is speaking the truth.

[*Having examined the evidence of the two witnesses, the learned judge concluded:*]

I considered very carefully all the evidence in this case and in particular compared the evidence of the plaintiff with that of Lee Swee Hin. It is true that Lee Swee Hin did speak an untruth in the course of his evidence, but having considered his evidence carefully and having tested it with the rest of the evidence in this case I found that his evidence apart from that one untruth, appeared to be reliable and in my opinion could be accepted as the truth of the matter. He was certainly a much more reliable witness than the plaintiff who on his own admission was not only capable but quite willing to tell a lie if it would help him in his claim. The plaintiff did not impress me at all as a truthful witness and in my opinion he was a totally unreliable witness. Under the circumstances, I accepted Lee Swee Hin's evidence that he never made the promise which the plaintiff alleged he did. The burden of proof on this issue was clearly on the plaintiff. It was for him to prove that such a promise had been made and as he had failed to do so I held that Maynard & Co., Ltd. were not prohibited by the terms of their sub-tenancy from sub-letting to the second defendants. The plaintiff was consequently not entitled to an order for possession against the second defendants and his claim was therefore dismissed with costs.

Claim dismissed.

Solicitors: *Hilborne & Co.; Donaldson & Burkinshaw.*

LIM v. NG

[O.C.J. (Buttrose J.) May 17, 1968]
[Singapore — Divorce No. 148 of 1966]

Family Law — Divorce — Petition for — Cruelty — Mental cruelty — Injury to health — Cumulative reprehensible conduct of respondent.

This was a wife's petition for divorce on the ground of her husband's mental cruelty. The petitioner was married to the respondent on April 23, 1960 and there was one child of the marriage. She alleged that the marriage had broken down because of the respondent's conduct and treatment of her and that she could not continue to reside with him as her health had been seriously undermined and impaired. The medical evidence was that her condition could be described as "moderately severe anxiety state" which if not checked could lead to a very serious condition resulting possibly in suicide. The reprehensible conduct of the despondent which the petitioner complained of were as follows:— (a) the respondent was a man of ungovernable temper who was offensive and used obscene and vulgar language; (b) the respondent continually insisted that he was physically and mentally a superior being to the petitioner; (c) the respondent ignored the petitioner at parties and social visits; (d) the respondent criticized her cooking; (e) the respondent did not give the petitioner sufficient pocket money and (f) the respondent was rough and crude in his marital relations with the petitioner.

Held: (1) there was injury to the petitioner's health and a reasonable apprehension of further serious injury to it;

(2) the combination of all the various factors, the cumulative reprehensible conduct of the respondent was sufficiently weighty that the petitioner ought not to be called on to endure it any further.

Cases referred to:—

(1) *Jamieson* v. *Jamieson* [1952] 1 All E.R. 875, H.L.

(2) *Gollins* v. *Gollins* [1963] 2 All E.R. 966, H.L.

(3) *Williams* v. *Williams* [1963] 2 All E.R. 994, H.L.

DIVORCE PETITION.

G. Starforth Hill for the petitioner.

S. K. Lee for the respondent.